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12 COYNESS L. ENNIX, JR., M.D.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16 COYNESS L. ENNIX, JR., M.D.,

17 Plaintiff,

18 v.

19 ALTA BATES SUMMIT MEDICAL CENTER,

20 Defendant.  
21  
22

CASE NO. C 07-2486 WHA

**JOINT [PROPOSED] PRETRIAL  
ORDER**

**DATE:** May 19, 2008  
**TIME:** 2:00 p.m.  
**DEPT:** Ctrm. 9, 19th Flr.  
**JUDGE:** Hon. William H. Alsup

**COMPLAINT FILED:** May 9, 2007  
**TRIAL DATE:** June 2, 2008

1 **I. BRIEF DESCRIPTION OF THE SUBSTANCE OF CLAIMS AND DEFENSES**  
 2 **WHICH REMAIN TO BE DECIDED.**

3 **A. Plaintiff.**

4 Plaintiff Coyness Ennix, M.D. is a cardiac surgeon. He claims that his race  
 5 was a motivating factor in actions taken by defendant Alta Bates Summit Medical Center  
 6 to subject him to heightened peer review and restrict his surgical practice at defendant's  
 7 hospital. Dr. Ennix claims that defendant did not treat similarly situated Caucasian  
 8 surgeons the same as it treated him. Defendant denies Dr. Ennix's claims.

9 **B. Defendant.**

10 There are two issues remaining: whether plaintiff individually can show a  
 11 contract sufficiently specific to support his § 1981 claim; and whether plaintiff can show a  
 12 violation of § 1981. Defendant contends that the facts regarding the contract claim are  
 13 not in dispute. Therefore defendant asks this Court to adjudicate the issue.

14 Alternatively, as discussed in defendant's Motion in Limine No. 2, defendant asks that  
 15 the Court allow the jury to determine the contract issue before it considers the  
 16 discrimination issue. Because the first question is both narrow and dispositive of  
 17 Plaintiff's claim, it makes sense to have it determined first. Indeed, the Ninth Circuit has  
 18 endorsed this very idea: "One favored purpose of bifurcation is to accomplish just what  
 19 the district court sought to do here—avoiding a difficult question by first dealing with an  
 20 easier, dispositive issue." *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001).

21 **II. STATEMENT OF ALL RELIEF SOUGHT.**

22 **A. Plaintiff.**

23 Dr. Ennix seeks to recover damages for earnings he claims to have lost,  
 24 earnings he claims he will lose in the future and emotional distress he claims to have  
 25 suffered.

26 **B. Defendant.**

27 Defendant seeks an award of attorneys' fees pursuant to § 1981.  
 28

1 **III. ALL STIPULATED FACTS.**

- 2 1. Ennix has been on staff at Alta Bates or Summit Medical Center (or their  
3 predecessors) since 1981.
- 4 2. Ennix has never been an employee of ABSMC.
- 5 3. The East Bay Cardiac Surgery Center held certain contracts with ABSMC.
- 6 4. National Medical Audit is a unit of The Mercer Human Resource Consulting  
7 Group and performs outside peer reviews for hospitals.
- 8 5. The “authenticity” requirements under the Federal Rules of Evidence are  
9 satisfied for the final National Medical Audit (“NMA”) report and all NMA  
10 draft reports that were produced in discovery.
- 11 6. The “authenticity” requirements under the Federal Rules of Evidence are  
12 satisfied for the July 13, 2006 Medical Board of California report regarding  
13 Dr. Ennix that was produced in discovery.
- 14 7. The “authenticity” requirements under the Federal Rules of Evidence are  
15 satisfied for ABSMC’s eight-page chart regarding MIV surgeries by  
16 physicians other than Dr. Ennix that was produced in discovery.
- 17 8. The “authenticity” requirements under the Federal Rules of Evidence are  
18 satisfied for all ABSMC Summit Medical Center Medical Staff Rules and  
19 Regulations that were produced in discovery.
- 20 9. The “authenticity” requirements under the Federal Rules of Evidence are  
21 satisfied for all ABSMC Medical Staff of Summit Medical Center Bylaws  
22 that were produced in discovery.
- 23 10. The “authenticity” requirements under the Federal Rules of Evidence are  
24 satisfied for all the meeting minutes of the AHC, the MEC and the SPRC  
25 from Jan 2004 through July 2006 involving Ennix's peer review.
- 26 11. The “authenticity” requirements under the Federal Rules of Evidence are  
27 satisfied for all ABSMC [medical records](#).
- 28

1 Agreements as to authenticity shall not be construed as agreements as to  
2 admissibility.

3  
4 **IV. FACTUAL ISSUES WHICH REMAIN TO BE TRIED**

5 **A. Plaintiff.**

- 6 1. Did ABSMC's actions against Dr. Ennix deprive Dr. Ennix of his ability to  
7 perform under or enjoy the benefits of any contracts?
- 8 2. Was Dr. Ennix's race a motivating factor in ABSMC's decisions to subject  
9 him to extensive peer review and suspend or restrict his medical staff  
10 privileges?
- 11 3. While there are a number of secondary facts in dispute, plaintiff does not  
12 read the Court's pretrial order to seek a list of those facts.

13 **B. Defendant.**

14 There is only a single count at issue, plaintiff's claim under § 1981. Arising  
15 out of this count, there are three primary factual issues remaining to be tried—i.e.,  
16 whether plaintiff can show by a preponderance of the evidence: (1) that a contract exists  
17 between plaintiff, as an individual, and either defendant or at least one identifiable  
18 patient of plaintiff; (2) that, with race as a motivating factor, defendant deprived plaintiff of  
19 benefits under the contract or contracts ; and (3) that plaintiff suffered injury.

20 In addition, there are a number of supporting facts at issue. They are:

- 21
- 22 1. Whether the Summit medical staff initiated and continued peer review of  
23 plaintiff only to ensure appropriate care of ABSMC's patients?
- 24 2. Whether anyone involved in the peer review process harbored racial bias  
25 against African-Americans.
- 26 3. What factors are appropriately considered by a medical staff in deciding to  
27 initiate peer review?
- 28 4. What factors were in fact considered prior to initiating the peer review

- 1 actions plaintiff challenges?
- 2 5. What factors are appropriately considered by a medical staff in deciding to
- 3 continue peer review?
- 4 6. What factors were in fact considered prior to continuing the peer review
- 5 actions plaintiff challenges?
- 6 7. Whether plaintiff's surgical record is "indistinguishable" from his peers?
- 7 8. Whether, as he has claimed, plaintiff enjoyed a reputation as an
- 8 exceptional surgeon in the medical community?
- 9 9. Whether personnel from the Alta Bates medical staff complained about
- 10 plaintiff to Dr. Steven Stanten and/or Dr. William Isenberg.
- 11 10. Whether plaintiff had a history of poor patient care?
- 12 11. Whether plaintiff had a history of failing to appropriately document
- 13 surgeries?
- 14 12. Whether plaintiff lacked technical skill as a surgeon?
- 15 13. Whether plaintiff had a history of making poor patient selections?
- 16 14. Whether plaintiff had a history of lacking focus during surgery?
- 17 15. Whether plaintiff had a history of making poor medical judgments?
- 18 16. Whether the Summit medical staff only used outside peer review bodies
- 19 such as NMA when it sought to "get" a physician?
- 20 17. Whether the restrictions imposed upon plaintiff were consistent with the
- 21 Bylaws and regulations of the Summit medical staff?
- 22 18. Whether patient outcomes arising out of the four botched MIV-procedures
- 23 were in themselves sufficient to initiate the peer review process?
- 24 19. Whether the Summit medical staff made proper use of its statistical
- 25 evidence to support its peer review decisions?
- 26 20. Whether Plaintiff's mortality rate was acceptable?
- 27 21. Whether Dr. Hon S. Lee ever "cleared" plaintiff of patient care issues?
- 28 22. Whether plaintiff has used this lawsuit as an effort to chill peer review of his

surgeries?

23. Whether NMA's review was racially biased?

24. Whether NMA concluded that plaintiff presented a risk to patient safety?

25. Whether plaintiff was afforded an appropriate opportunity to participate in the NMA review?

26. Whether plaintiff was afforded an appropriate opportunity to participate in the Summit medical staff peer review process.

27. Whether the restrictions imposed upon plaintiff improved plaintiff's performance?

28. Whether there are any physicians "similarly situated" to plaintiff.

**V. EXHIBIT LIST**

**A. Plaintiff.**

See Appendix A-1.

**B. Defendant.**

See Appendix A-2

**VI. WITNESS LISTS**

**A. Plaintiff.**

See Appendix B-1.

**B. Defendant.**

See Appendix B-2

1 DATED: May 12, 2008

Respectfully submitted,

2 KAUFF MCCLAIN & MCGUIRE LLP

3  
4 By: /S/  
ALEX HERNAEZ

5 Attorneys for Defendant  
6 ALTA BATES SUMMIT MEDICAL  
7 CENTER

8 DATED: May 12, 2008

MOSCONE, EMBLIDGE & QUADRA, LLP

9  
10 By: /S/  
G. SCOTT EMBLIDGE

11 Attorneys for Plaintiff  
12 COYNESS L. ENNIX, JR., M.D.

13 4822-8201-5490.1

**APPENDIX A-1****Plaintiff's Exhibit List**

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
200.	Patient Authorizations, Verifications and Consents to Surgery (E2681-2693)			
201.	ABSMC's Racial Composition Data concerning the Summit Medical Staff membership for 2004 through 2006. (Exhibit A to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment)			
202.	Summit Medical Staff, Physician Rosters, 2004, 2005, 2006 (D5124-5211)			
203.	Exhibit B to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment			
204.	Exhibit C to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment			
205.	Exhibit D to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment			
206.	Exhibit E to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment			
207.	Exhibit F to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary			



#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
	Judgment			
208.	February 13, 2005, letter regarding Dr. Ennix from cardiothoracic surgeon Junaid Khan to Dr. Isenberg (D4474)			
209.	April 19, 2006, letter from all of the proctors to Dr. Paxton (Exhibit Y to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment)			
210.	2003-2004 California CABG Outcomes Reporting Program Report ("CCORP") (Exhibit 3 to Spiritus Deposition)			
211.	Memorandum written by Dr. Isenberg regarding his February 24, 2004, telephone conversation with Dr. Moorstein (D4155; D5092; Exhibit CC to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment)			
212.	ABSMC Objections and Responses to Plaintiff's Special Interrogatories, Set One (Exhibit EE to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment)			
213.	ABSMC Objections and Responses to Plaintiff's Request for Production of Documents, Set Two (Exhibit FF to the Declaration of Andrew E. Sweet in Support of Opposition to Defendant's Motion for Summary Judgment)			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
214.	April 26, 2006 email from Joanne Jellin to Ad Hoc Committee; return email from Barry Horn to Joanne Jellin dated April 27, 2006 (D4793)			
215.	Minutes from December 30, 2005 Special Meeting (D4760-D4763)			
216.	January 6, 2006 letter from William Isenberg to Dr. Ennix (D4768)			
217.	Minutes from January 10, 2006 MEC Executive Session (D3269-D3271)			
218.	March 30, 2006 letter from Lamont Paxton to Hon Lee (D4783-4786)			
219.	Minutes from May 10, 2005 Special Meeting (D2013-D2014)			
220.	Memorandum written by William Isenberg dated May 13, 2005 (D2000)			
221.	November 29, 2004 letter from John Girard to William Isenberg (D4404)			
222.	December 2, 2004 letter from Dennis Durzinsky to Steven Stanten (D4389)			
223.	November 28, 2004 letter from David Estrich to Lamont Paxton (D4382-D4383)			
224.	November 30, 2004 letter from Denis Drew to William Isenberg (D4384)			
225.	November 30, 2004 letter from Earl Holloway to William Isenberg (D4386)			
226.	November 27, 2004 letter from Joseph Bermudez to Lamont Paxton (D4387)			
227.	November 26, 2004 letter from General Hilliard to Lamont Paxton (D4349)			
228.	November 26, 2004 letter from John Edelen to Lamont Paxton (D4380)			
229.	February 15, 2005 letter from Dr. Ennix to Steven			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
	Stanten (D4476-D4482)			
230.	May 31, 2005 letter from John Etchevers to William Isenberg (D4625-D4629)			
231.	July 3, 2005 email from William Isenberg to Harry Shulman (D4651)			
232.	August 28, 2005 letter from James Lovin to Lamont Paxton (D4678)			
233.	2007 Annual Alta Bates Medical Staff Due Invoice (E002477)			
234.	November 15, 2006, letter from Michael Kim, M.D. to Coyness L. Ennix (E002476)			
235.	December 4, 2006, check from Coyness L. Ennix, Jr. M.D., Inc. to Summit Medical Center for Medical Staff dues (E002473)			
236.	November 6, 2006, check from Coyness L. Ennix, Jr. M.D., Inc. to Alta Bates Summit Medical Center for Outpatient Services (E002443)			
237.	September 28, 2006, check from Coyness L. Ennix, Jr. M.D., Inc. to Alta Bates Medical Staff for Annual Dues (E002396)			
238.	December 30, 2005, check from Coyness L. Ennix, Jr. M.D., Inc. to Alta Bates Medical Staff for Application Fee (E002158)			
239.	Summit Cardiothoracic Surgery Peer Review Committee Meeting Minutes regarding Dr. Ennix's six CABG cases (attached as Exhibit A to the Declaration of Coyness L. Ennix, Jr. M.D. in Opposition to Defendants' Special			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
	Motion to Strike)			
240.	December 18, 2003, letter from John G. Rosenberg, M.D., M.P.H. to Annette Schaieb, M.D. (attached as Exhibit D to the Declaration of Coyness L. Ennix, Jr. M.D. in Opposition to Defendants' Special Motion to Strike)			
241.	Nursing Progress Notes (Exhibit F to the Declaration of Coyness L. Ennix, Jr. M.D. in Opposition to Defendants' Special Motion to Strike)			
242.	Medical Charts for the Ten Cases (E000801-1004, E001430-39, E001668-1821)			
243.	April 19, 2006 letter from proctors to Paxton (E 1663)			
244.	Plaintiff's damages documentation (E001472-1500, E002851-84)			
245.	September 6, 1995 letter to Thomas Forde re Physician A on Defendant's Exhibit A (D5291-5293)			
246.	May 25, 1994 letter from Thomas Forde re Physician B on Defendant's Exhibit A (D5297-5298)			
247.	Stipulated Settlement and Order and associated documents re Physician F on Defendant's Exhibit A (D5570-5595)			
248.	May 31, 2002 letter to Isenberg re Physician J on Defendant's Exhibit A (D6016-6017)			
249.	April 17, 2002 "Special Meeting" minutes re Physician J on Defendant's Exhibit A (D6023)			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
250.	"Confidential memo" re Physician J on Defendant's Exhibit A (D6025-6026)			
251.	May 23, 2000 memo re Physician J on Defendant's Exhibit A (D6027-6028)			
252.	May 24, 2000 "Special Peer Review Meeting" minutes re Physician J on Defendant's Exhibit A (D6029-6030)			
253.	June 28, 2002 letter from Shaieb re Physician K on Defendant's Exhibit A (D6056-6057)			
254.	June 12, 2002 "Letter of Reprimand" re Physician K on Defendant's Exhibit A (D6058-6059)			
255.	July 9, 2002 MEC minutes re Physician K on Defendant's Exhibit A (D6073)			
256.	May 8, 2007 MEC minutes re Physician M on Defendant's Exhibit A (D6094-6095)			
257.	May 8, 2007 MEC minutes re Physician N on Defendant's Exhibit A (D6108-6109)			
258.	April 23, 1993 memo from William DeWolf re Physician O on Defendant's Exhibit A (D6123-6124)			
259.	April 22, 1993 letter from DeWolf re Physician O on Defendant's Exhibit A (D6125-6126)			
260.	April 15, 1993 memo from DeWolf re Physician O on Defendant's Exhibit A (D6127-6150)			
261.	August 12, 1986 letter from Gordon Lake re Physician P on Defendant's Exhibit A (D6217-6218)			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
262.	February 27, 1992 letter to Herskowitz re Physician P on Defendant's Exhibit A (D6219-6220)			
263.	October 4, 1991 letter to Herskowitz re Physician P on Defendant's Exhibit A (D6221-6223)			
264.	July 12, 1993 letter to Marzouk re Physician P on Defendant's Exhibit A (D6224)			
265.	June 28, 1993 letter to Marzouk re Physician P on Defendant's Exhibit A (D6229-6231)			
266.	June 4, 1993 AHC report re Physician P on Defendant's Exhibit A (D6232-6257)			
267.	February 18, 2005 letter from Lozano to Medical Staff President (E1300)			
268.	February 23, 2005 letter from Huitron and Camacho to Medical Staff President (E1301 and 1302)			
269.	February 18, 2005 letter from Tenret to Medical Staff President (E1303)			
270.	February 18, 2005 letter from Sultan to Medical Staff President (E1304)			
271.	February 18, 2005 letter from Sequeira to Medical Staff President (E1305)			
272.	December 10, 2004 letter from Helena Lendel to Isenberg (E001836)			
273.	January 3, 2005 letter from Kirk to Ennix (E001837)			
274.	August 22, 2005 letter from Paul J. Islas to whom it may concern (E001838-39)			
275.	Identification of Documents or Other Exhibits Plaintiff May			

1	#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
2		Offer at Trial if the Need Arises			
3	276.	Plaintiff's Verified State Court Complaint			
4	277.	Summit Medical Center Medical Staff Rules and Regulations 2/04 D 0262-0321			
5	278.	April 12, 2004 Surgery Peer Review Committee minutes D 4195-4201			
6	279.	April 15, 2004 letter from Rosenberg to Isenberg re status of Alta Bates review D 1854-1855			
7	280.	April 21, 2004 letter from Isenberg to Ennix D 4209-4210			
8	281.	May 5, 2004 Medical Staff Report to the Board of Trustees D 4214			
9	282.	January 4, 2005 letter from Paxton and Isenberg to Smithline w/enclosures. D 2558-2564			
10	283.	May 10, 2005 Special Meeting D 1997-1998			
11	284.	July 7, 2005 AHC Minutes D2385-2388			
12	285.	July 27, 2005 AHC Minutes D 2389			
13	286.	August 1, 2005 AHC Report to the MEC with attached Appendices A, B and B 2 (the NMA Report, Tabular STS Data Submitted by Dr. Ennix and a Graph Prepared re such data). D 2933-2999			
14	287.	September 7, 2005 MEC Executive Session Minutes D 3003			
15	288.	December 30, 2005 letter from Isenberg to Ennix re Summary Restriction D 2901-2902			
16	289.	January 6, 2006 letter from Isenberg to Ennix D 2884			
17	290.	March 14, 2006 letter			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
	Herskowitz to Ennix D 4780			
291.	May 9, 2006 MEC Executive Session Minutes D 3272--3273			
292.	May 10, 2006 letter from Herskowitz to Ennix D 2877-2878			
293.	July 11, 2006 MEC Executive Session Minutes D 3276			
294.	July 11, 2006 letter from Herskowitz to Ennix D 3311-3312			
295.	Exhibit A to ABSMC's Responses to Plaintiff's Special Interrogatories, Set One (also Exhibit F to Hernaez Declaration in Support of Defendant's Motion for Summary Judgment).			
296.	Material from Peer Review file of Physician E D 5497-5500, 5511, 5513, 5514, 5522-5527, 5528-5529, 5542-5543			
297.	Material from the Peer Review file of Physician F D 5597-5602			
298.	Material from the Peer Review file of Physician G D 5678-5681, 5652-5654, 5657, 5676-5677			
299.	Material from the Peer Review file of Physician I D 5906-5984, 5985, 5986			
300.	Material from the Peer Review file of Physician J D 6010, 6012-6013, 6014-6015, 6018-6022			
301.	Material from the Peer Review file of Physician L D 6085-6091			
302.	Material from the Peer Review file of Physician O D 6153-6169, 6170-6201, 6202-6208, 6210-6213			



**APPENDIX A-2****Defendant's Exhibits Intended To Be Presented At Trial.<sup>1</sup>**

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
1.	Plaintiff's Verified State Court Complaint			
2.	Bylaws Summit Medical Staff February 2003 D 0001-0083			
3.	Bylaws Summit Medical Staff June 2005 D 0084-0172			
4.	Summit Medical Center Medical Staff Rules and Regulations 2/04 D 0262-0321			
5.	Summit Medical Center Medical Staff Rules and Regulations 4/05 D 0800-0864			
6.	Patient care evaluation from the Card/Thor Surgery Committee to Dr. Ennix dated May 3, 1991 D 1447			
7.	Abstract from SPR committee re case discussed in D 1839 D 1840			
8.	10/15/01 letter from Moorstein to Ennix D 1839			
9.	March 5, 2003 memo Iverson to Ennix re documentation issue. D 1786			
10.	July 23, 2003 letter to Ennix from the Quality Management Dept D 4072			
11.	June 10, 2003 memo from Iverson to Ennix re lack of documentation D 1794			
12.	July 1, 2003 Memorandum of Understanding re Exchange of Confidential			

<sup>1</sup> This list does not include impeachment documents.

1	#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
2		Peer Review Information D 1382-1387			
3	13.	December 9, 2003 letter from John Rosenberg to Ennix forwarding the Junod report. D 4146-4150			
4	14.	Junod report and forwarding memo from the Alta Bates Medical Staff President D 1847-1852			
5	15.	April 12, 2004 Surgery Peer Review Committee minutes D 4195-4201			
6	16.	April 13, 2004 MEC Executive Session Minutes D 4206			
7	17.	April 15, 2004 letter from Rosenberg to Isenberg re status of Alta Bates review D 1854-1855			
8	18.	April 21, 2004 letter from Isenberg to Ennix D 4209-4210			
9	19.	April 28, 2004 Isenberg letter to Ennix D 4212-4213			
10	20.	May 5, 2004 Medical Staff Report to the Board of Trustees D 4214			
11	21.	July 22, 2004 letter from Isenberg to Ennix D 1760-1761			
12	22.	August 10, 2004 MEC Executive Session Minutes D 3322			
13	23.	Chronology of Ad Hoc Committee Meetings and Interviews D 2008			
14	24.	August 13, 2004 AHC Minutes D 1860			
15	25.	August 24, 2004 letter from Paxton to Ennix Re Ad Hoc Committee investigation D 1863			
16	26.	August 30, 2004 AHC Minutes D 1861-1862			
17	27.	September 20, 2004 AHC Minutes D 1864-1866			

1	#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
2					
3	28.	September 27, 2004 AHC Minutes D 1881-1884			
4	29.	October 4, 2004 AHC Minutes D 1886-1888, D 4312			
5	30.	October 11, 2004 AHC Minutes D 1895-1897			
6	31.	October 25, 2004 AHC Minutes D 4318-4319			
7	32.	October 27, 2004 AHC Minutes D 1910-1912			
8	33.	October 28, 2004 AHC Minutes D 1918-1923			
9	34.	January 4, 2005 letter from Paxton and Isenberg to Smithline w/enclosures. D 2558-2564			
10					
11					
12	35.	March 8, 2005 MEC Executive Session Minutes D 3321			
13	36.	May 10, 2005 Special Meeting D1997-1998			
14	37.	Excerpts from Patient's file D 2397-2444			
15	38.	May 18, 2005 MEC Executive Session Minutes D 2502-2506			
16					
17	39.	May 19, 2005 AHC Minutes D 2194-2195			
18	40.	May 19, 2005 letter from Isenberg to Ennix D 2507-2508			
19					
20	41.	May 25, 2005 suspension notice for delinquent medical records D 2214			
21	42.	May 27, 2005 AHC Minutes D 2197-2201			
22	43.	May 31, 2005 letter to Ennix from Paxton re AHC investigation D 2255-2258			
23					
24	44.	June 6, 2005 MEC Executive Session Minutes D 4630			
25					
26	45.	June 14, 2005 MEC Executive Session Minutes D 4637			
27	46.	June 24, 2005 AHC Minutes D 2381			
28					

1	#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
2					
3	47.	June 29, 2005 AHC Minutes D 2382-2384			
4	48.	July 7, 2005 AHC Minutes D2385-2388			
5	49.	July 27, 2005 AHC Minutes D 2389			
6	50.	August 1, 2005 AHC Report to the MEC with attached Appendices A, B and B 2 (the NMA Report, Tabular STS Data Submitted by Dr. Ennix and a Graph Prepared re such data). D 2933-2999			
7					
8					
9					
10	51.	August 15, 2005 MEC Executive Session Minutes D 2928-2930			
11	52.	September 7, 2005 MEC Executive Session Minutes D 3003			
12					
13	53.	September 9, 2005 letter from Isenberg to Ennix			
14	54.	October 11, 2005 MEC Executive Session Minutes D 3264			
15	55.	October 11, 2005 letter from Isenberg to Ennix D 4707-4715			
16					
17	56.	October 25, 2005 letter from Isenberg to Ennix D 4734-4735			
18					
19	57.	November 2, 2005 Medical Staff Report to the Board of Trustees D 4745			
20					
21	58.	November 8, 2005 MEC Executive Session Minutes D 3267			
22	59.	December 13, 2005 MEC Executive Session Minutes D 4755-4756			
23					
24	60.	December 30, 2005 letter from Isenberg to Ennix re Summary Restriction D 2901-2902			
25					
26	61.	January 6, 2006 letter from Isenberg to Ennix D 2884			
27	62.	March 14, 2006 letter Herskowitz to Ennix D 4780			
28					

1	#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
2					
3	63.	May 4, 2006 AHC Report to the MEC D 3274			
4	64.	May 9, 2006 MEC Executive Session Minutes D 3272--3273			
5	65.	May 10, 2006 letter from Herskowitz to Ennix D 2877-2878			
6					
7	66.	July 10, 2006 Memo from AHC to Herskowitz D 3277-3309			
8	67.	July 11, 2006 MEC Executive Session Minutes D 3276			
9					
10	68.	July 11, 2006 letter from Herskowitz to Ennix D 3311-3312			
11	69.	Medical Board Letter to Ennix dated July 13, 2006 E 169-170			
12					
13	70.	August 2, 2006 Medical Staff report to the Board of Trustees D 4837			
14					
15	71.	The California Report on Coronary Artery Bypass Graft Surgery 2000 to 2002 dated February 2005, by Judicial Notice.			
16					
17	72.	Medical Director Loan Out and Coverage Agreement dated 9/21/01. E002697-002717.			
18					
19	73.	Exhibit A to ABSMC's Responses to Plaintiff's Special Interrogatories, Set One (also Exhibit F to Hernaez Declaration in Support of Defendant's Motion for Summary Judgment).			
20					
21					
22					
23	74.	Material from the Peer Review file of Physician C D 5416-5474			
24					
25	75.	Material from Peer Review file of Physician E D 5497-5500, 5511, 5513, 5514, 5522-5527, 5528-5529, 5542-5543			
26					
27	76.	Material from the Peer Review file of Physician F D 5597-5602			
28					

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
77.	Material from the Peer Review file of Physician G D 5678-5681, 5652-5654, 5657, 5676-5677			
78.	Material from the Peer Review file of Physician H D 5721-5722, D 5735-5740, D 5752-5757, 5773-5801 (also from E's file, see D 5528)			
79.	Material from the Peer Review file of Physician I D 5906-5984, 5985, 5986			
80.	Material from the Peer Review file of Physician J D 6010, 6012-6013, 6014-6015, 6018-6022			
81.	Material from the Peer Review file of Physician L D 6085-6091			
82.	Material from the Peer Review file of Physician O D 6153-6169, 6170-6201, 6202-6208, 6210-6213			
83.	Ware Expert Reports			
84.	Caldwell Expert Report			
85.	J. Donald Hill Ennix Quality Assurance Report E002889-EO2898.			
86.	Exhibits 4 and 5 to Bruce Reitz Deposition.			
87.	Anesthesia Subcommittee Minutes Alta Bates Medical Center D 3873-3875			
88.	Cardiac Surgery Peer Review Panel Re MD B0280 D 4156-4187			
89.	Minimally Invasive Chart produced 1/25/08 (without the dissimilar procedures) D 7182-7189			
90.	Diagram of Heart (to be provided)			
91.	Charts developed or reviewed by William Isenberg in his review of Ennix's patient care issues. D 1536-1545, D			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
	1908, D 1843-1846, D 1900-1903, D 4023			

**Exhibits Defendant Will Present At Trial If The Need Arises.**

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
92.	February 9, 2004 S. Stanten notes re MIV procedures D 4152			
93.	February 9, 2004 Special Meeting Minutes D 1739-1741			
94.	February 24, 2004 Isenberg note re review of MIV procedures			
95.	April 16, 2004 Special Meeting Minutes D 1742-1744			
96.	April 26, 2004 Special Meeting Minutes D 1746-1748			
97.	Excerpt from June 14, 2004 SPRC meeting, D 4222-4223			
98.	July 8, 2004 Special Meeting Minutes D 1756-1757			
99.	August 9, 2004 SPRC meeting minutes excerpt D 4256 and 4258			
100.	September 14, 2004 Gomez e-mail to Jellin re Request from AHC with attached documents D 1867-1872			
101.	October 15, 2004 Note by James Lovin D 4317			
102.	January 30, 2005 letter from Ennix to Kirk re peer review process E00026-000027			
103.	February 5, 2005 letter from Ennix to Kirk E 000028-000029			
104.	February 15, 2005 letter from Ennix to Kirk E000031-37			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
105.	February 22, 2005 letter from Isenberg to Ennix D 4498-4499			
106.	February 22, 2005 memo from Isenberg to MEC members D 4500			
107.	OR note dated 3/23/05 D 2498-2499			
108.	March 29, 2005 Medical Staff Officers Meeting D 1984			
109.	April 12, 2005 Special Meeting Minutes D 1994-1995			
110.	May 12, 2005 Confidential Note to File of Coyness Ennix, M.D. D 1999			
111.	5/13/05 Confidential Note to file of Coyness Ennix, M.D. D 2000			
112.	Confidential memo for peer review file by S. Stanten D 2001			
113.	August 9, 2005 letter from Etchevers to Shulman D 3000-3002			
114.	MEC subcommittee meeting minutes D 5113			
115.	September 22, 2005 CE/MEC subcommittee notes D 5083-5084			
116.	November 29, 2005 letter from Ennix to Taylor E002753			
117.	November 29, 2005 letter from Ennix to Sweezer E002756			
118.	November 29, 2005 letter from Ennix to Young E 002761			
119.	November 29, 2005 letter from Ennix to Kirk E002763			
120.	December 6, 2005 letter from Ennix to Ludmer E002774			
121.	December 8, 2005 letter from Ennix to Brown E002767			



1	#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
2					
3	122.	December 13, 2005 letter from Ennix to Carson E 002771			
4	123.	December 15, 2005 letter from Ennix to Newell E 002780			
5					
6	124.	January 18, 2006 letter from Ennix to Kirk seeking financial support E 002076-002077			
7					
8	125.	April 18, 2006 letter from Ennix to Lasiter E 002821			
9					
10	126.	Duncan Expert Report			
11	127.	Medical Board Proceedings involving Balkissoon Exhibit 2 to Defendant's Request for Judicial Notice			
12					
13	128.	Medical Board Proceedings involving Grewal Exhibit 1 to Defendant's Reply Request for Judicial Notice			
14					
15					
16	129.	Ennix's description of cases considered by NMA D 3668, 3715-16, 3753, 3766, 3686, 3705, 3739, 3776, 3792			
17					
18					
19	130.	Email from Smithline to Isenberg and Weaver emails re draft report including R & R's – April 29, 2005 through May 2, 2005 NMA 01392-1393			
20					
21					
22	131.	Email from Shulman to Isenberg and Smithline May 2, 2005 re draft report re ABS-006 NMA 01394			
23					
24					
25	132.	Chart - Issues Raised by Dr. Ennix Re Mercer Qualifications - Cases related to Dr. Breyer's Medical Practice of 30 Years NMA 01537			
26					
27					
28					

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
133.	Chart - Issues Raised by Dr. Ennix Re Mercer Qualifications - Cases related to Dr. Housman's medical practice of 30 years NMA 01539			
134.	Chart - Cases related to employee who embezzled funds from Dr. Housman's Practice - Cases related to Dr. Breyer's Medical Practice of 30 Years NMA 01539-01540			
135.	<b>From Medical Record 1205056</b>			
136.	Surgeon's OR reports NMA 06747-48, NMA 06749-50			
137.	Doctor's Progress Notes NMA 06786-06790			
138.	Patient Consents NMA 07239, NMA 07240			
139.	Intraoperative Nursing Records NMA 06766-06771			
140.	<b>From Medical Record 1282678</b>			
141.	History & Physical NMA 07255			
142.	Surgeon's OR report NMA 07266-07267			
143.	Intraoperative Nursing Record NMA 07271-72			
144.	Patient Consent NMA 07561			
145.	<b>From Medical Record 1282803</b>			
146.	History and Physical NMA 07569-70			
147.	Discharge Summary NMA 07571-72			
148.	Surgeon's OR report NMA 07589-90			
149.	Intraoperative Report NMA 07596-98			
150.	Patient Consent NMA 07964			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
151.	<b>From Medical Record 1283240</b>			
152.	History & Physical NMA 07978-79			
153.	Surgeon's OR report NMA 07986-87			
154.	Intraoperative Nursing Record NMA 07991-93			
155.	Patient Consent NMA 08230			
156.	<b>From Medical Record 1296513</b>			
157.	Surgeon's OR reports NMA 09387-92			
158.	Intraoperative Nursing Record NMA 09398-400			
159.	<b>From Medical Record 1124908</b>			
160.	Discharge Summary NMA 10965-66			
161.	Surgeon's OR Reports NMA 10990-94			
162.	Progress Notes NMA 10999-11012			
163.	Intraoperative Nursing Notes NMA 10976-81			
164.	Anesthesia Record NMA 10982-10985			
165.	Code Blue Record NMA 11110			
166.	Critical Care Flowsheet NMA 11148			
167.	<b>From Medical Record 1281866</b>			
168.	Surgeon's OR Report NMA 8424-8425			
169.	Perfusionist record NMA 08446			
170.	Intraoperative Nursing Report NMA 8435-8437			
171.	March 5, 2004 letter from Ennix to Stanten D 4193-4194			
172.	July 15, 2004 letter from Ennix to "Eisenberg" (sic) D 1758-1759			
173.	August 4, 2004 letter from Ennix to Isenberg D 1762-1763			

#	Description	Offered into Evidence	Received Into Evidence	Limitations on Use
174.	September 9, 2004 letter from Ennix to Paxton D 1873			
175.	January 25, 2005 letter from Ennix to Paxton D 1960-1977			
176.	March 3, 2005 letter from Ennix to Smithline D 4506-4507			
177.	March 21, 2005 letter from Ennix to Smithline D 3703-3704			
178.	March 28, 2005 letter from Ennix to Smithline D 4596-4598			
179.	April 5, 2005 letter Ennix to Isenberg D 4601-4604			
180.	April 15, 2005 letter from Ennix to Paxton D 1996			
181.	May 11, 2005 letter to Ennix from Isenberg D 2010-2012			
182.	June 15, 2005 letter from Ennix to Paxton D4639-4640			
183.	September 15, 2005 letter from Ennix to Isenberg D 3265			
184.	October 24, 2005 letter from Ennix to Isenberg			
185.	Plaintiff's Response to Defendant's Special Interrogatory, Set No. 1 dated October 4, 2007			
186.	Plaintiff's Supplemental Response to Defendant's Special Interrogatory, Set No. 1 dated October 17, 2007			

**APPENDIX B-2****Plaintiff's Separate Witness List For His Case-In-Chief Witnesses**

1. Coyness Ennix, M.D.
2. William S. Weintraub, M.D. Dr. Weintraub will testify as an expert biostatistician, epidemiologist and in medical outcomes assessment. Dr. Weintraub will testify that there was no meaningful difference in performance between Dr. Ennix and his peers. Dr. Weintraub will testify as to the opinions in his two expert reports provided to ABSMC in this case.
3. Alex Zapolanski, M.D. Dr. Zapolanski will testify as an expert cardiac surgeon regarding standard of care issues and the validity of the NMA's criticisms of Dr. Ennix. Dr. Zapolanski reviewed the same 10 cases that the NMA reviewed. Dr. Zapolanski will testify as to the opinions in his report dated January 25, 2008.
4. Eugene Spiritus, M.D. Dr. Spiritus will testify as an expert regarding peer review issues. Dr. Spiritus will testify as to the opinions in his report dated January 25, 2008.
5. Margo Leahy, M.D. Dr. Leahy will testify as an expert regarding whether a schizophrenic patient was capable of providing informed consent to surgery and whether Dr. Ennix obtained informed consent from this patient, identified by ABSMC as ABS-001. Dr. Leahy will testify as to the opinions in her report dated January 22, 2008.
6. Jed Greene, C.P.A. Mr. Greene will testify as an expert regarding damages issues. Mr. Greene will testify as to the opinions in his report dated January 25, 2008.
7. Bruce Reitz, M.D. Dr. Reitz will testify as an expert cardiac surgeon regarding standard of care issues and the validity of the NMA's criticisms of Dr. Ennix. Dr. Reitz will testify as to the opinions in his report dated September 2, 2005. Dr.

1 Reitz reviewed the same 10 cases that the NMA reviewed and his findings were  
2 submitted to the MEC before the MEC took action against Dr. Ennix.

3 8. Bruce Lytle, M.D. Dr. Lytle will testify as an expert cardiac surgeon regarding  
4 standard of care issues and the validity of the NMA's criticisms of Dr. Ennix. Dr.  
5 Lytle will testify as to the opinions in his report dated September 7, 2005. Dr.  
6 Lytle reviewed the same 10 cases that the NMA reviewed and his findings were  
7 submitted to the MEC before the MEC took action against Dr. Ennix. Dr. Lytle's  
8 testimony is cumulative to that of Dr. Reitz, but a valuable second opinion by an  
9 internationally respected surgeon.

10 9. Hon Lee. M.D. Dr. Lee will testify as to his assessment of the four minimally  
11 invasive cases, his involvement in Dr. Ennix's peer review, his assessment of Dr.  
12 Ennix's competence and skill, the proctorship process, communications with  
13 ABSMC regarding that process, the decision to initiate a second peer review of  
14 the ten cases, his assessment of any or all of the ten cases and his experience  
15 relating to peer reviews of other non-white and white physicians at ABSMC.

16 10. Junaid Kahn, M.D. Dr. Kahn will testify as to the assessment of the ten cases, his  
17 involvement in the peer review process, communications between him and any of  
18 the individual defendants regarding Dr. Ennix's peer review, his experience  
19 relating to peer reviews of other non-white and white physicians at ABSMC and  
20 his assessment of Dr. Ennix's competence and skill.

21 11. Richard Shaw, PhD. Dr. Shaw will testify as an expert medical statistician as to  
22 comparisons between Dr. Ennix' surgical results and those of other surgeons  
23 performing procedures at Summit Medical Center. Dr. Shaw will testify as to the  
24 opinions in his report dated August 30, 2005. Dr. Shaw submitted his report to  
25 the MEC before the MEC took adverse action against Dr. Ennix.

26 12. Harry Shulman. Mr. Shulman will testify that he is legal counsel to ABSMC. Mr.  
27 Shulman will testify as to non-privileged communications that he had with various  
28

1 parties during the Dr. Ennix's peer review. Mr. Shulman will testify as to his roll  
2 during Dr. Ennix's peer review.

3 13. Joanne Jellin. Ms. Jellin will testify pursuant to Rule 30(b)(6). Ms. Jellin will  
4 testify as to ABSMS's normal or typical peer review procedures, and to the  
5 differences between those normal or typical peer reviews and Dr. Ennix's peer  
6 review. Ms. Jellin will testify as to how she drafted and finalized the peer review  
7 meeting minutes during Dr. Ennix's peer review. Ms. Jellin will testify to her  
8 observations during peer review meetings regarding Dr. Ennix. Ms. Jellin will  
9 authenticate documents.

10 14. Jai Balkisoon, M.D. Dr. Balkisoon will testify as to his own peer review process at  
11 ABSMC, as a physician of color.

12 15. Albertine Omani, M.D. Dr. Omani will testify about her experience relating to peer  
13 reviews of non-white and white physicians at ABSMC.

14 16. Coletta Hargis, M.D. Dr. Hargis will testify about her experience relating to peer  
15 reviews of non-white and white physicians at ABSMC.

16 17. Tracy Phillips, M.D. Dr. Phillips will testify about her experience relating to peer  
17 reviews of non-white and white physicians at ABSMC.

18 18. Noli Silva, M.D. Dr. Silva will testify as to the systemic issues at Alta Bates  
19 Campus that lead to Junod Report, Dr. Ennix's performance on cases during  
20 which Dr. Silva was present, including the minimally invasive cases, and her  
21 experience relating to peer reviews of other non-white and white physicians at  
22 ABSMC.

23 19. Filberto Burciaga. Mr. Burciaga will testify that he was Dr. Ennix's patient. Mr.  
24 Burciaga will testify as to the Authorization for and Consent to Surgery or Special  
25 Diagnostic or Therapeutic Procedures, and the Verification of Consent for  
26 Coronary Intervention, dated May 3, 2005, that he signed, which authorized Dr.  
27 Ennix to perform surgery on him. Mr. Burciaga will testify as to Dr. Ennix's care  
28

1 before and after his surgery. Mr. Burciaga is the patient that ABSMC claims Dr.  
2 Ennix failed to see, which led to a summery suspension.

3 20. Makalita Leao. Ms. Leao will testify that she was Dr. Ennix's patient. Ms. Leao  
4 will testify as to the Authorization for and Consent to Surgery or Special  
5 Diagnostic or Therapeutic Procedures, dated May 4, 2005, that she signed, which  
6 authorized Dr. Ennix to perform surgery on her. Ms. Leao will testify that Dr.  
7 Ennix could not perform the surgery due to adverse actions taken by ABSMC.

8 21. Alice Ashton. Ms. Ashton will testify that she was Dr. Ennix's patient. Ms. Ashton  
9 will testify as to the Authorization for and Consent to Surgery or Special  
10 Diagnostic or Therapeutic Procedures, dated May 4, 2005, that she signed, which  
11 authorized Dr. Ennix to perform surgery on her. Ms. Ashton will testify that Dr.  
12 Ennix could not perform the surgery due to adverse actions taken by ABSMC.

13 22. Donald Aissa. Mr. Aissa will testify that he was Dr. Ennix's patient. Mr. Aissa will  
14 testify as to the Authorization for and Consent to Surgery or Special Diagnostic or  
15 Therapeutic Procedures, dated May 3, 2005, that he signed, which authorized Dr.  
16 Ennix to perform surgery on him. Mr. Aissa will testify that Dr. Ennix could not  
17 perform the surgery due to adverse actions taken by ABSMC.

18 23. Jessie Lozano. Mr. Lozano will testify that he is the Minimally Invasive patient  
19 ABSMC refers to as ABS-001. Mr. Lozano will testify as to his surgical  
20 experience and the current state of his health.

21 24. Esther Huitron. Ms. Huitron will testify that she is the Minimally Invasive patient  
22 ABSMC refers to as ABS-002. Ms. Huitron will testify as to her surgical  
23 experience and the current state of her health.

24 25. Jean Tenret. Ms. Tenret will testify that he is the Minimally Invasive patient  
25 ABSMC refers to as ABS-004. Mr. Tenret will testify as to his surgical experience  
26 and the current state of her health.

27 26. Joe Bermudas, M.D. Dr. Bermudas will testify that he is an Anesthesiologist at  
28 Summit and has worked extensively with Dr. Ennix. Dr. Bermudas will testify as



1 to his involvement with the peer review process, his experience relating to peer  
2 reviews of other non-white and white physicians at ABSMC and Dr. Ennix's skill  
3 and competence.

4 27. Dennis Drew, M.D. Dr. Drew will testify as to the six additional cases subject to a  
5 second peer review and Dr. Ennix's skill and competence regarding those cases,  
6 including case ABS-007 where Dr. Drew was the treating cardiologist. Dr. Drew  
7 will testify as to his experience relating to peer reviews of other non-white and  
8 white physicians at ABSMC.

9 28. Rollington Ferguson, M.D. Dr. Ferguson will testify as to the assessment of any  
10 or all of Dr. Ennix's four minimally invasive cases, and his experience relating to  
11 peer reviews of other non-white and white physicians at ABSMC. Dr. Ferguson  
12 will testify regarding informed consent issue surrounding a schizophrenic patient  
13 identified by ABSMC as ABS-001.

14 29. Dhun Sethna, M.D. Dr. Sethna will testify as to the assessment of any or all of Dr.  
15 Ennix's four minimally invasive cases and any or all of the ten cases, and his  
16 experience relating to peer reviews of other non-white and white physicians at  
17 ABSMC. Dr. Sethna was the cardiologist on one of the cases that ABSMC used  
18 against Dr. Ennix.

19 30. Gregory Quinn, M.D. Dr. Quinn will testify as to the six additional cases subject to  
20 a second peer review and Dr. Ennix's skill and competence regarding those  
21 cases, and his experience relating to peer reviews of other non-white and white  
22 physicians at ABSMC. Dr. Quinn was the cardiologist on one of the cases that  
23 ABSMC used against Dr. Ennix.

24 31. General Hilliard, M.D. Dr. Hilliard will testify as to the six additional cases subject  
25 to a second peer review and Dr. Ennix's skill and competence regarding those  
26 cases, and his experience relating to peer reviews of other non-white and white  
27 physicians at ABSMC. Dr. Hilliard was the cardiologist on one of the cases that  
28 ABSMC used against Dr. Ennix.

1 32. Dennis Durzinsky, M.D. Dr. Durzinsky will testify as to the proctorship process,  
2 communications with ABSMC regarding that process, his assessment of Dr.  
3 Ennix's surgical skill and competence and his experience relating to peer reviews  
4 of other non-white and white physicians at ABSMC. Dr. Durzinsky will testify as to  
5 the proctoring process.

6 33. William Isenberg, M.D. Dr. Isenberg will testify that he was the President of the  
7 Medical Staff during Dr. Ennix's peer review. Dr. Isenberg will testify as to his  
8 motivations, reasons and steps taken to peer review Dr. Ennix. Dr. Isenberg will  
9 testify as to the atypical procedures used during Dr. Ennix's peer review. Dr.  
10 Isenberg will testify as to authentication of documents.

11 34. Steven Stanten, M.D. Dr. S. Stanten will testify that he was the Chair of the  
12 Department of Surgery during Dr. Ennix's peer review. Dr. S. Stanten will testify  
13 as to his motivations, reasons and steps taken to peer review Dr. Ennix. Dr. S.  
14 Stanten will testify as to the atypical procedures used during Dr. Ennix's peer  
15 review.

16 35. Russell Stanten, M.D. Dr. R. Stanten will testify that he was the Chair of the  
17 Division of Cardiothoracic Surgery during Dr. Ennix's peer review. Dr. R. Stanten  
18 will testify as to his experience and knowledge of Dr. Ennix's professional abilities  
19 and to his motivations and roll in Dr. Ennix's peer review. Dr. R. Stanten will  
20 testify as to the atypical procedures used during Dr. Ennix's peer review. Dr. R.  
21 Stanten will also testify as to his professional experiences and difficulties as a  
22 cardiothoracic surgeon.

23 36. Leigh Iverson, M.D. Dr. Iverson will testify that he was one of Dr. Ennix's partners  
24 at the commencement of Dr. Ennix's peer review. Dr. Iverson will testify as to his  
25 experiences and knowledge of Dr. Ennix's professional abilities and to his  
26 motivations and roll in Dr. Ennix's peer review. Dr. Iverson will also testify as to  
27 his professional experiences and difficulties as a cardiothoracic surgeon.  
28

**APPENDIX B-2****Defendant's Witness List**

Set forth below is Defendant's witness list, except for impeachment witnesses.

**A. Witnesses Defendant Expects To Present.**

1. Kim Ware, Esq., Ware Law Group, 1500 Park Ave., #212, Emeryville, CA 94608. Telephone No. (510) 272-0453. Ms. Ware will testify as an expert on the origins, purposes, and common practices of peer review of doctors in California, and will describe the statutory requirements for peer review. Ms. Ware will testify as to the opinions set forth in her two reports dated 1/25/08 and 2/14/08 which have been provided to Plaintiff. This expert testimony is non-cumulative.

2. William Isenberg, M.D., Ph.D., 365 Hawthorne Ave., Oakland, CA, 94609. Telephone number: (510) 893-1700. Dr. Isenberg, who was President of the Summit Medical Staff during Dr. Ennix's peer review process, will testify about the functions and process of peer review, applicable Medical Staff Bylaws and Rules and Regulations, and the various considerations, steps, decisions and actions undertaken in the peer review of Dr. Ennix from approximately January 2004 to July 2006. Dr. Isenberg will also testify as to his role as a peer reviewer in any comparable peer review actions undertaken at the MEC level. Dr. Isenberg will also testify about the efforts of the Medical Staff to monitor the quality of care of all doctors on the Medical Staff and to foster improvement of patient care, particularly in the area of surgical procedures. Dr. Isenberg's testimony is non-cumulative.

3. Steven Stanten, M.D., 365 Hawthorne Ave., Suite 101, Oakland, CA 94609. Telephone number: (510) 465-5523. Dr. Stanten, Chair of the Surgery Peer Review Committee from early 2004 to the present will testify about receiving information concerning the minimally invasive valve procedures performed by Dr. Ennix in late January, early February 2004, steps he took to further review those valve procedures, the April 12, 2004 determination of the Surgery Peer Review Committee to recommend

1 further review of Dr. Ennix's quality of care, his participation and decision making in the  
2 peer review of Dr. Ennix, and follow-up concerning patient care topics on the part of the  
3 Surgery Peer Review Committee. Dr. Stanten will also testify about general efforts to  
4 monitor and improve the provision of patient care in all surgical areas. Dr. Stanten's  
5 testimony about reviewing the MIV procedures and about the actions of the Surgery  
6 Peer Review Committee is non-cumulative.

7 4. LaMont Paxton, M.D., General Vascular Surgery Medical Group,  
8 Inc., 13851 East 14<sup>th</sup> Street, Suite 201, San Leandro, CA 94578. Telephone number:  
9 (510) 357-4006. Dr. Paxton, who was Chair of the Ad Hoc Committee ("AHC")  
10 appointed by the Summit Medical Staff Medical Executive Committee ("MEC") to review  
11 Dr. Ennix's practice, will testify about the work, process and determinations of the AHC,  
12 as well as his decision-making during the April 12, 2004 Surgery Peer Review  
13 Committee meeting. Dr. Paxton's testimony regarding his decisions and regarding the  
14 work of the AHC is non-cumulative.

15 5. Barry Horn, M.D., 2450 Ashby Ave., Berkeley, CA 94705.  
16 Telephone number: (510) 204-4173. Dr. Horn, who was a member of the AHC, will  
17 testify as to his decision-making regarding the recommendation of the AHC for corrective  
18 action concerning Dr. Ennix. Dr. Horn will testify about the review of poor outcomes in  
19 cardiac surgeries undertaken by the Alta Bates Medical Staff in the mid-1990's at a time  
20 when Dr. Ennix was one of two cardiac surgeons at Alta Bates. Dr. Horn's testimony will  
21 be presented by deposition due to his unavailability during the trial time. Dr. Horn's  
22 testimony, including about his own decision-making, is non-cumulative.

23 6. Dat Ly, M.D., Summit Medical Center, 350 Hawthorne Avenue,  
24 Oakland, CA 94609. Telephone number: (510) 655-4000. Dr. Ly, who was the third  
25 member of the AHC, will testify as to his decision-making concerning the  
26 recommendation of the AHC for corrective action concerning Dr. Ennix. Dr. Ly's  
27 testimony about his own decision-making is non-cumulative.

28

1                   7.       Russell Stanten, M.D., 3300 Webster Street, Suite 500, Oakland,  
2 CA 94609. Telephone number: (510) 465-6600. Dr. Stanten, who is a cardiac surgeon  
3 on the Summit Medical Staff, and one of Dr. Ennix's partners until Dr. Ennix voluntarily  
4 withdrew from the East Bay Cardiac Surgery Center in October 2005, will describe  
5 various cardiac procedures, including how lengthy operating times and other factors,  
6 such as blood product usage, increase the risk to the patients. Dr. Stanten will describe  
7 the various statistical means for tracking a physician's performance. Dr. Stanten will  
8 describe his participation in Dr. Ennix's peer review process. Dr. Stanten will also  
9 describe how minimally invasive valve procedures differ from standard procedures, and  
10 the training he and other members of the OR team undertook before he started to  
11 perform minimally invasive valve procedures. Dr. Stanten will discuss the outcomes of  
12 MIV procedures performed by other cardiac surgeons. Dr. Stanten will discuss Dr.  
13 Ennix's reputation in the ABMSC medical community for poor judgment, documentation  
14 issues and inattentiveness to patients and/or his own observations regarding Dr. Ennix's  
15 poor coverage of patients and lack of availability. Dr. Stanten will testify about general  
16 efforts to improve patient care in the area of cardiac surgery. Dr. Stanten's testimony  
17 about cardiac procedures, statistical results, general efforts to improve cardiac surgery,  
18 his preparation for performing minimally invasive procedures, his input into the peer  
19 review process and his knowledge re Dr. Ennix's patient care issues is non-cumulative.

20                   8.       Fredric Herskowitz, M.D., 350 30th Street, Suite 520, Oakland, CA.  
21 Telephone number: (510) 465-6800. Dr. Herskowitz will testify about the circumstances  
22 of the closure of the Alta Bates Medical Center cardiac program, will testify about his  
23 observations concerning Dr. Ennix's cover-up, through falsifying a progress note, of his  
24 failure to adequately examine a post-operative patient on May 5, 2005, and will testify  
25 about his role, as a Medical Staff Officer and MEC member, in the peer review of Dr.  
26 Ennix and others who are comparable to Dr. Ennix. Dr. Herskowitz will testify about the  
27 purposes and procedures of peer review at Summit Medical Center. Dr. Herskowitz will  
28 testify about Dr. Ennix's reputation in the ABSMC medical community for poor judgment

1 and inattentiveness to patients, as well as about his own observations concerning Dr.  
2 Ennix's approach to patient care. Dr. Herskowitz's testimony on the following topics is  
3 non-cumulative: the May 5, 2005 incident, Dr. Ennix's reputation, Dr. Herskowitz's  
4 observations of Dr. Ennix's care of patients, and Dr. Herskowitz's decision-making  
5 relative to Ennix's peer review.

6 9. Bruce Moorstein, M.D., 350 30th Street, Providence Medical Office  
7 Building, Oakland, CA. Telephone number: (510) 835-2070. Dr. Moorstein will testify  
8 about his role as an officer of the Medical Staff and MEC member in the steps taken and  
9 determinations made in Dr. Ennix's peer review and about his officer role in comparable  
10 peer review actions. Dr. Moorstein will testify about Dr. Ennix's reputation in the ABSMC  
11 medical community for poor judgment and inattentiveness to patients, and about Dr.  
12 Moorstein's own observations concerning Dr. Ennix's provision of patient care. Dr.  
13 Moorstein's testimony about his determinations and participation in the Ennix peer  
14 review, his reputational evidence and his testimony about comparable peer review  
15 actions are non-cumulative.

16 10. Neil Smithline, Director of Clinical Quality, National Medical Audit  
17 ("NMA"), Three Embarcadero Center, San Francisco, CA, 94111. Telephone number:  
18 (415) 393-5650. Dr. Smithline, a National Medical Audit ("NMA") employee who oversaw  
19 the outside review of Dr. Ennix performed by NMA in early 2005, will testify as to the  
20 organization, purposes and reports of NMA, as to the selection of reviewers for Dr.  
21 Ennix's review, as to the conduct of the review and as to the conclusions reached in the  
22 review. Dr. Smithline will testify the neither he nor other NMA reviewers knew Dr.  
23 Ennix's race. All of Dr. Smithline's testimony is non-cumulative.

24 11. Leland Housman, M.D., 4033 3rd Avenue, Suite 210, San Diego,  
25 CA 92103. Telephone number: (619) 297-5600. Dr. Housman, a cardiac surgeon who  
26 served as a reviewer for NMA in its chart review of Dr. Ennix's cases, will testify as to his  
27 work for NMA, the conduct of Dr. Ennix's review, the opinions he reached as a result of  
28 such review and his lack of knowledge concerning Dr. Ennix's race during the time he

1 conducted such review. Dr. Housman's testimony about his actions, lack of knowledge  
2 regarding Dr. Ennix's race, and his decision-making concerning care issues is non-  
3 cumulative.

4 12. Robert H. Breyer, M.D., 2800 North Sheridan Rd. Suite 209,  
5 Chicago, IL 60657. Telephone number: (773) 477-4343. Dr. Breyer, a cardiac surgeon  
6 who served as a reviewer for NMA in its chart review of Dr. Ennix's cases, will testify as  
7 to his work for NMA, the conduct of Dr. Ennix's review, the opinions he reached as a  
8 result of such review and his lack of knowledge concerning Dr. Ennix's race. Dr.  
9 Breyer's testimony about his actions, lack of knowledge regarding Dr. Ennix's race and  
10 his decision-making concerning care issues is non-cumulative.

11 13. Hon S. Lee, M.D., Kaiser Permanente, 280 West MacArthur Blvd.,  
12 Oakland, CA 94611. Telephone number: (510) 752-6183. Dr. Lee, a cardiac surgeon  
13 employed by Kaiser Permanente, will testify about his performance of a review of Dr.  
14 Ennix's initial minimally invasive procedures, his expectations regarding how the review  
15 would be used, his conclusion that reasonable persons could have determined not to  
16 accept his review, his factual observation that the process was fair toward Dr. Ennix and  
17 concerning his and other Kaiser surgeons' proctoring of Ennix. Dr. Lee's testimony is  
18 non-cumulative.

19 14. Bruce Reitz, M.D., Professor of Cardiothoracic Surgery Stanford  
20 Medical Center, 300 Pasteur Drive, Falk Building, Stanford, CA 94305. Telephone  
21 number: (650) 725-4497. Dr. Reitz, a cardiac surgeon retained by Dr. Ennix during the  
22 peer review process, will testify as to his retention, his initial report, his revision of such  
23 report at the suggestion of Dr. Ennix's lawyer and his deletion, again at the suggestion of  
24 Dr. Ennix's lawyer, of any derogatory comments. Dr. Reitz's testimony will be presented  
25 by deposition due to his unavailability during the trial time. Dr. Reitz's testimony is non-  
26 cumulative.

27 15. J. Donald Hill, M.D., CPMC, 2340 Clay Street, 1<sup>st</sup> Floor, San  
28 Francisco 94115. Telephone number: (415) 600-1090. Dr. Hill will testify about his



1 report as an expert retained by Dr. Ennix in the peer review process, and his finding that  
2 Dr. Ennix's conduct in one of the 10 cases he reviewed was below the standard of care.  
3 Dr. Hill's testimony is non-cumulative.

4 16. Brian Hite, M.D., 1600 Riviera Avenue, Suite 420, Walnut Creek, CA  
5 94596. Telephone number: (925) 951-1366 . Dr. Hite will testify about his participation  
6 in the peer review process concerning Dr. Ennix, the observations and opinions he  
7 related to the AHC and/or Medical Staff Officers, and about his knowledge of Dr. Ennix's  
8 practice which led him to make such observations and reach such opinions. Dr. Hite will  
9 also testify about the preparations he and other OR team members made before  
10 commencing minimally invasive valve procedures. Dr. Hite will testify about Dr. Ennix's  
11 reputation for patient care. Dr. Hite will also testify about his participation in comparable  
12 peer review processes. Dr. Hite's observations of Dr. Ennix's performance, his report of  
13 such observations to the AHC, his preparation for performing minimally invasive  
14 procedures, his knowledge of comparable peer review actions, and his knowledge of Dr.  
15 Ennix's reputation are non-cumulative topics.

16 17. John F. Donovan, M.D., 350 Hawthorne Ave., Oakland, CA 94609.  
17 Summit Medical Staff Office, 350 Hawthorne Ave. Oakland, CA 94609. Telephone  
18 number: (510) 655-4000. Dr. Donovan will testify about his participation in the Ennix  
19 peer review process as an individual who appeared before the AHC, as a member of the  
20 MEC, and as an individual who had discussions with officer(s) of the Medical Staff  
21 concerning Dr. Ennix's practice. Dr. Donovan will testify about the observations of Dr.  
22 Ennix's practice that he related to the AHC and Officers. Dr. Donovan will testify about  
23 his knowledge of Dr. Ennix's reputation in the ABSMC medical community. Dr.  
24 Donovan will testify about the impact of proctoring on Dr. Ennix's care of patients. Dr.  
25 Donovan will also testify about comparable peer review processes. The following are  
26 non-cumulative areas of testimony: Dr. Donovan's observations of Dr. Ennix's  
27 performance, his reports to the AHC and Officers, his knowledge of Dr. Ennix's  
28



1 reputation, his observations of the impact of proctoring and his participation in  
2 comparative peer review.

3 18. Warren Kirk, Chief Executive Officer, ABSMC, 2450 Ashby Ave.  
4 Berkeley, CA 94705 will testify regarding his knowledge of the absence of a contractual  
5 relationship between Dr. Ennix and the Medical Center or between Dr. Ennix and any  
6 third party relating to Dr. Ennix's provision of patient care at the Medical Center; the  
7 purposes of the peer review process, the Medical Center's obligation and efforts to  
8 provide quality patient care, the structure of the Medical Staff and of the Medical Center,  
9 the services provided by the Medical Center, the efforts of Dr. Ennix to use outside  
10 pressure to influence the peer review process, the role of the ABSMC's Board of  
11 Trustees in Ennix's peer review process, and the statutory and regulatory requirements  
12 of insuring patient care imposed on the Medical Center and its Medical Staffs. Mr.  
13 Warren's testimony is non-cumulative.

14 19. Annette Shaieb, M.D., Pathology Department, 350 Hawthorne  
15 Avenue, Oakland, CA 94609. Telephone number: (510) 869-6567. Dr. Shaieb, as an  
16 officer of the Medical Staff in 2004-2006 and a member of the MEC during Dr. Ennix's  
17 review, will testify as to her role in Dr. Ennix's peer review, the purposes and processes  
18 for peer review at Summit Medical Center and her knowledge, as a past president of the  
19 Medical Staff, of peer review procedures concerning comparable investigations and  
20 corrective actions undertaken at the MEC level. Dr. Shaieb may testify as to Dr. Ennix's  
21 reputation in the ABSMC medical community. Dr. Shaieb's testimony regarding  
22 comparable investigations, her decision-making regarding Dr. Ennix's peer review and  
23 her knowledge of his reputation is non-cumulative.

24 20. Joanne Jellin, PsyD, Director of Medical Staff Services, Summit  
25 Medical Staff Office, 350 Hawthorne Ave., Oakland, CA 94609. Telephone number:  
26 (510) 655-4000. Ms. Jellin will testify as to the organization of the peer review function  
27 at Summit Medical Center, the confidential nature of the peer review process, and the  
28 work of her department. Jellin will authenticate and describe the Chart of peer review

1 actions undertaken at the MEC level during the time period of 1992 through 2007 which  
2 is Exh. F to the Hernaez Declaration submitted in support of Defendant's Motion for  
3 Summary Judgment. Ms. Jellin's testimony about Exhibit F is non-cumulative.

4 21. Marilyn Barkin, R.N., Quality Care Coordinator at Summit Medical  
5 Center with responsibility for providing support services to the Cardiothoracic Peer  
6 Review Committee, 350 Hawthorne Ave., Oakland, CA 94609. Telephone number:  
7 (510) 655-4000. Ms. Barkin will authenticate and describe the chart she prepared  
8 showing the outcomes of minimally invasive valve procedures performed at Summit  
9 Medical Center 2004 to present. Ms. Barkin's testimony about the chart of minimally  
10 invasive procedures is non-cumulative.

11 22. Kathy Falstad, Office Manager, East Bay Cardiac Surgery Center,  
12 3300 Webster St. Suite 500, Oakland, CA 94609, (510) 465-6600. Ms. Falstad will  
13 authenticate statistical analyses she performs for the Medical Center concerning the  
14 outcomes and other indicia of patient care issues regarding cardiac surgeries performed  
15 at ABSMC. Ms. Falstad may also testify about the documents which relate to the  
16 physician's provision of services to patients, such as patient billing. Ms. Falstad's  
17 testimony is non-cumulative.

18 23. John Caldwell, 100 California Street, Suite 800, San Francisco, CA  
19 94111. Telephone number: (415) 395-1751. Mr. Caldwell will testify as an expert  
20 regarding Dr. Ennix's damages including the conclusions reached in his report dated  
21 February 8, 2008. Caldwell's testimony as an expert is non-cumulative.

22 24. Ronald Dritz, M.D. (Ret.), Alta Bates Medical Staff Office, 2450  
23 Ashby Ave. Berkeley, CA 94705, 510-204-1417. Dr. Dritz will testify about the poor  
24 outcomes of surgeries performed by Plaintiff at the Alta Bates campus, and relative to  
25 the reasons for the closure of the Alta Bates cardiac program in early 2003. Dr. Dritz will  
26 testify about his observations concerning Dr. Ennix's care of patients. Dr. Dritz's  
27 knowledge of Plaintiff's work and his knowledge concerning the closure of the Alta Bates  
28 cardiac program are non-cumulative.

1                   25.     Forest Junod, M.D., 5412 Tree Side Drive, Carmichael, CA 95608.  
2     Telephone number: (916) 971-1444. Dr. Junod will testify about the outside review he  
3     performed of cardiac procedures done by Dr. Ennix at the Alta Bates Medical Center in  
4     2002 and his conclusions regarding issues of Dr. Ennix's judgment, patient selection and  
5     operating skill as set forth in his report submitted to the Alta Bates Medical Staff in  
6     11/2003 and thereafter provided by the Alta Bates Medical Staff to the Summit Medical  
7     Staff under a memorandum of understanding to share peer review information between  
8     the medical staffs. Testimony about the outside review that Dr. Junod performed is non-  
9     cumulative.

10                  26.     Leigh I.G. Iverson, M.D. (Ret.), 2718 Santa Lucia Avenue, Carmel,  
11     CA 93923. Telephone number: (831) 625-6750. Dr. Iverson will testify regarding his  
12     long-standing partnership with Dr. Ennix, the concerns he had regarding Dr. Ennix's  
13     judgment, documentation and attentiveness to patients, his expression of those  
14     concerns to Dr. Ennix and the actions of the partnership in taking care of cardiac  
15     patients. Dr. Iverson will testify as to Dr. Ennix's reputation in the ABSMC medical  
16     community. Dr. Iverson's testimony about his partnership with Dr. Ennix, his expressed  
17     concerns regarding care issues to Dr. Ennix and his knowledge of Dr. Ennix's reputation  
18     is non-cumulative.

19                  27.     Gretchen Kunitz, M.D., former member (and officer) of the Alta  
20     Bates Medical Staff, Alta Bates Medical Staff Office, 2450 Ashby Ave., Berkeley, CA  
21     94705. Telephone number: (510) 204-1417. Dr. Kunitz will talk about the reasons for  
22     the inception of peer review of Dr. Ennix at Alta Bates in 2002 and the reasons why the  
23     peer review process was not completed but was rather relayed to the Summit Medical  
24     Center staff when Dr. Ennix transferred his practice from Alta Bates to Summit. Dr.  
25     Kunitz's testimony regarding the inception of peer review at Alta Bates is non-  
26     cumulative.

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28

**B. Witnesses Defendant Will Present If The Need Arises.**

1. John Gentile, M.D. Vice President of Medical Affairs, ABSMC, 2450 Ashby Ave., Berkeley, CA 94705. Telephone number: (510) 204-4444. Dr. Gentile will testify about the contracts the Medical Center has with physician groups rather than with individual physicians, the structure of the Medical Staff and its relation to the Medical Center, the absence of any contractual relationship between the Medical Center and Dr. Ennix during the relevant time period, the relationship of the Medical Center to individual physicians in the provision of patient care, and the contractual relationship between the Medical Center and the East Bay Cardiac Surgery Center during relevant times. Dr. Gentile will testify about the obligations of the Medical Center and its Medical Staff to foster quality of care. Dr. Gentile's testimony is largely cumulative of Mr. Warren's testimony.

2. Lisa Yee, M.D., 818 Webster Street, Oakland, CA 94607. Telephone number: (510) 986-6800. Dr. Yee will testify as to her determinations regarding corrective action for Dr. Ennix as a member of the MEC. Testimony regarding Dr. Yee's individual decision-making is non-cumulative.

3. James R. Saunders, M.D., 424 28th Street, Oakland, CA 94609. Telephone number: (510) 452-4824. Dr. Saunders will testify as to his determinations regarding corrective action for Dr. Ennix as a member of the MEC and may also testify about Dr. Ennix's reputation in the ABSMC medical community. Testimony regarding Dr. Saunders' individual decision-making is non-cumulative.

4. Louis Komarmy, M.D., Pathology Department, 350 Hawthorne Ave., Oakland, CA 94609. Telephone number: (510) 869-6567. Dr. Komarmy, a member of the Summit Medical Staff MEC in 2005, will testify regarding his decision-making concerning corrective action to be imposed on Dr. Ennix as a result of the AHC report. Dr. Komarmy may testify as to Dr. Ennix's reputation in the ABSMC medical community. Both these areas relate to Dr. Komarmy's individual knowledge and are hence non-cumulative.

1                   5.       Joan Shields, R.N., Summit Medical Center, 350 Hawthorne Ave.,  
2       Oakland, CA 94609. Telephone number: (510) 655-4000. Ms. Shields will testify about  
3       Dr. Ennix's failure to examine a patient on 5/5/05, and her discussions with Dr. Ennix  
4       and Dr. Isenberg regarding that topic. Ms. Shields may testify as to Dr. Ennix's  
5       reputation in the ABSMC medical community. As a witness to the May 5, 2005 event,  
6       Ms. Shields' testimony is non-cumulative.

7                   6.       Gregory M. Duncan, Ph.D., 100 California Street, Suite 800, San  
8       Francisco, CA 94111. Telephone number: (415) 395-1717. Mr. Duncan will testify as  
9       an expert concerning the use of statistics in the peer review process as set forth in his  
10      report dated February 22, 2008. This expert testimony is non-cumulative.

11                  7.       Larry Zemansky, M.D. (Ret.), Anesthesiology, 125 Cole Street, San  
12      Francisco, CA 94117. Telephone number: (415) 386-3362. Dr. Zemansky will testify  
13      about the poor outcomes of surgeries performed by Plaintiff at the Alta Bates campus,  
14      and relative to the reasons for the closure of the Alta Bates cardiac program in early  
15      2003. Dr. Zemansky will testify as to Dr. Ennix's reputation in the ABSMC medical  
16      community. Except for Dr. Zemansky's knowledge of Dr. Ennix's care of patients and/or  
17      his reputation, his testimony is cumulative of Dr. Dritz's testimony.

18                  8.       James Lovin, Summit Medical Center, 350 Hawthorne Ave.,  
19      Oakland, CA 94609. Telephone number: (510) 655-4000. Mr. Lovin, a surgical  
20      technician at Summit Medical Center, will testify as to his communications to and  
21      discussion with the AHC regarding Dr. Ennix's skill and attentiveness during operations  
22      and the observations on which such communications were based. Mr. Lovin's  
23      observation of Dr. Ennix's performance and his reports of such to the AHC and/or  
24      Officers of the Medical Staff are non-cumulative.

25                  9.       Renee Russell, Manager, Alta Bates Medical Staff Services, Alta  
26      Bates Summit Medical Center, 2450 Ashby Ave., Ste. 1160, Berkeley, CA 94705.  
27      Telephone number: (510) 204-1417. Ms. Russell may testify regarding the closure of the  
28

1 Alta Bates cardiac program and the number and types of procedures  
2 performed by Ennix (as contrasted to other cardiac surgeons) at Alta Bates during all or  
3 part of the period of 1999 – 2002. Ms. Russell’s testimony regarding when Dr. Ennix  
4 was performing procedures at Alta Bates is non-cumulative.